

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD J. GENTRY

Claimant

VS.

STORMONT VAIL REGIONAL MEDICAL CENTER

Respondent

AND

**LIBERTY MUTUAL INSURANCE COMPANY,
ST. PAUL FIRE & MARINE INS. COMPANY,
NATIONAL INDEMNITY INSURANCE COMPANY,
FIREMAN'S FUND INSURANCE COMPANY, and
AETNA CASUALTY & SURETY COMPANY**

Insurance Carriers

AND

WORKERS COMPENSATION FUND

Docket Nos. 132,470;
132,471; & 135,308

ORDER

Claimant appeals from a preliminary hearing Order denying medical benefits entered by Administrative Law Judge Bryce D. Benedict on July 14, 1998.

ISSUES

The ALJ found claimant did not prove his current medical problems are due to his ethylene oxide (ETO) exposure at work. The ALJ further found that claimant had reached maximum medical improvement and was not in need of additional medical treatment. Claimant appeals those findings. The insurance carriers for respondent raise an issue concerning claimant's accident date for the purpose of determining which insurance carrier may be responsible for this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board has limited jurisdiction on appeals from preliminary hearing orders. The Appeals Board may review allegations that the ALJ exceeded his jurisdiction, including allegations that the ALJ erred on jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a. See K.S.A. 1997 Supp. 44-551(b)(2)(A).

The question of whether claimant's injury is causally connected to his employment with respondent gives rise to the jurisdictional issue of whether claimant suffered injury by accident or occupational disease that arose out of and in the course of his employment. At this time, however, that issue is moot because the ALJ also ruled that claimant had not proven a need for preliminary hearing benefits. Thus, even if this were found to be a compensable claim, no benefits would result. The question of whether claimant is in need of medical treatment is not a jurisdictional issue. The Appeals Board has also held that a dispute concerning which insurance carrier may be liable is also not a jurisdictional issue on an appeal from a preliminary hearing order. See Siyavong v. Kice Industries, Inc., Docket No. 215,916 (July 1997).

Thus, the ALJ's finding on the nonjurisdictional issue concerning the claimant's present need for medical treatment renders moot the jurisdictional issue concerning causation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction at this juncture of the proceedings to review the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict dated July 14, 1998, and that this appeal should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
James C. Wright, Topeka, KS
D'Ambra M. Howard, Overland Park, KS
Ronald J. Laskowski, Topeka, KS
Clifford K. Stubbs, Lenexa, KS
John F. Carpinelli, Topeka, KS
James B. Biggs, Topeka, KS
Bryce D. Benedict, Administrative Law Judge

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Philip S. Harness, Director